IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 16 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

HARSH FAMILY TRUST

Appearance:
MR AKIL QURESHI FOR MR MANISH R BHATT for Petitioner

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 11/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions are referred to us in respect of assessment year 1981-82 :-

1. Whether, on the facts and in the circumstances of the case, the Tribunal has been right in law in confirming the view taken by the Appellate Assistant Commissioner that the assessee is required to be assessed as specific trust and the shares of the beneficiaries to be assessed in their respective hands. ?

2. Whether, the Appellate Tribunal has been right in law in holding that assessee is not required to be assessed as a discretionary trust but as a specific trust and the shares to be assessed in the respective hands of the beneficiaries?"

2. Mr Akil Qureshi, learned counsel for the revenue points out that by order dated 9.2.1999 in Income-tax Reference No. 212 of 1984 concerning the same assessee for earlier assessment year, the following questions were answered against the revenue and in favour of the assessee :-

1. Whether, the Tribunal has not erred in law and on facts in holding that the assessee is a specific trust and that its income is exempt ?

2. Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that the assessee trust is a specific trust and not discretionary one liable to pay tax at the rate of 65% as held by the ITO is correct in law and sustainable from the material on record ?

Mr Qureshi further points out that the aforesaid order dated 9.2.1999 has also been followed in ITR No. 43 of 1985 disposed of by another Division Bench on 31.8.2000.

3. In view of the above, we answer the two questions referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

A copy of the order passed in ITR No. 43 of 1985 decided on 31.8.2000 is taken on record.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-